

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2212

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 709 to the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as amended, Fuentes. Minors: mental competency.

Existing statutory law, in counties that agree to be subject to these provisions pursuant to a resolution adopted by the board of supervisors, provides that when it appears to the court, or upon request of the prosecutor or counsel, that a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or may be found to be a ward of the juvenile court may have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation by a licensed mental health professional.

Existing court rules provide that if the court finds that there is reason to doubt that a child who is the subject of a petition to declare the child a ward of the juvenile court is capable of understanding the proceedings or of cooperating with the child's attorney, the court is required to stay the proceedings and conduct a hearing regarding the child's competence. If the court believes that a child who comes within that description is mentally disabled or may be mentally ill, the court may stay the proceedings and order that the child be taken to a facility for an evaluation, as specified.

This bill would provide, with respect to a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or may be found to be a ward of the juvenile court, that if, during the pendency of any action ~~prior to adjudication~~, a doubt is expressed that the minor who is the subject of the action ~~does not have the~~ *has* sufficient present ability to ~~rationality and factually understand the nature of the proceedings against him or her or assist~~ *consult with his or her attorney in his or her defense with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him or her*, the court shall declare a doubt as to the minor's competency and suspend the proceedings. The bill would require, upon declaration of a doubt as to the minor's competency, the court to order that the question of the minor's competence be determined in a hearing, as specified. The bill would require the court to appoint an expert in the field of juvenile adjudicative competency, *as specified*, to evaluate whether the minor suffers from a mental disorder, developmental disability, or developmental immaturity and, if so, whether the condition impairs the minor's competency. *The bill would require the Judicial Council to develop and adopt rules to implement these requirements.* The bill would require that, if the minor is found to be incompetent by a preponderance of the evidence, all proceedings remain suspended ~~until the minor becomes competent to determine whether there is a substantial probability that the minor will attain that capacity in the foreseeable future or the court no longer retains jurisdiction. The period of time during which these proceedings would be suspended would not exceed 6 months.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 709 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 709. (a) If, during the pendency of any action ~~prior to~~
- 4 ~~adjudication~~, a doubt is expressed that the minor who is the subject
- 5 of that action ~~does not have the~~ *has* sufficient present ability to
- 6 ~~rationality and factually understand the nature of the proceedings~~
- 7 ~~against him or her or assist his or her attorney in his or her defense;~~
- 8 *consult with his or her lawyer with a reasonable degree of rational*
- 9 *understanding, and a rational as well as factual understanding of*

1 *the proceedings against him or her*; the court shall declare a doubt
2 as to the minor's competency and *shall* suspend the proceedings.

3 (b) Upon declaration of a doubt as to the minor's competency,
4 the court shall order that the question of the minor's competence
5 is to be determined in a hearing. The court shall appoint an expert
6 in the field of juvenile adjudicative competency to evaluate whether
7 the minor suffers from a mental disorder, developmental disability,
8 or developmental immaturity, and, if so, whether the condition or
9 conditions impair the minor's competency. *The expert shall have*
10 *expertise in child and adolescent development and training in the*
11 *forensic evaluation of juveniles, and shall be familiar with*
12 *competency standards and accepted criteria used in evaluating*
13 *competence. The Judicial Council shall develop and adopt rules*
14 *for the implementation of these requirements.*

15 (c) If the minor is found to be incompetent by a preponderance
16 of the evidence, all proceedings shall remain suspended ~~until the~~
17 ~~minor becomes competent~~ *for a period of time that is no longer*
18 *than reasonably necessary to determine whether there is a*
19 *substantial probability that the minor will attain that capacity in*
20 *the foreseeable future, or the court no longer retains jurisdiction.*
21 *This period of time during which these proceedings are suspended*
22 *shall not exceed six months. During this time, the following motions*
23 *and hearings may be heard and ruled upon:*

24 (1) *A motion to dismiss.*

25 (2) *A motion by the defense regarding a change in the placement*
26 *of the minor.*

27 (3) *A detention hearing.*

28 (4) *A demurrer.*

29 (d) If the minor is found to be competent, the court may proceed
30 commensurate with the court's jurisdiction.

31 (e) This section applies to a minor who is alleged to come within
32 the jurisdiction of the court pursuant to Section 601 or 602.